# National Labor Relations Board Weekly Summary of

## **NLRB Cases**

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Press Release (R-2680): NLRB General Counsel Meisburg Announces His First Decision in a Paperless Administrative Appeals Case

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CNN America, Inc. and Team Video Services, LLC, Joint Employers (5-CA-31828, 33125; 353 NLRB No. 94) Washington, DC Feb. 13, 2008. On May 30, 2008, the Board granted the Respondent special permission to appeal an administrative law judge's denial of its petition to revoke subpoenas issued by the General Counsel and the Charging Party. 352 NLRB 675. In that proceeding, the Board found that the costs and burden of producing the vast number of subpoenaed documents requested in electronic format should be balanced against the relevance of and need for the documents. The Board directed the chief administrative law judge to assign a separate judge to act as a special master and analyze these issues using the framework provided in The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, Second Edition (The Sedona Conference Working Group Series, 2007). Accordingly, the Board remanded the proceeding to the chief administrative law judge for assignment of a judge to act as a special master to resolve the issues described above concerning the subpoenas. [HTML] [PDF]

On Dec. 1, 2008, a different judge issued a "Special Master's Report and Recommendations," in which the judge recommended that the Board accept the withdrawal by the General Counsel and the Charging Party of significant portions of the subpoenas and found that the Respondent had failed to meet its burden of demonstrating that the information being sought pursuant to the revised subpoenas would be unduly burdensome to produce. In finding that compliance would not impose an undue burden on the Respondent, the judge relied heavily on the fact that the Respondent necessarily had to identify, locate, examine, evaluate, and describe the items listed in its privilege and redaction logs—the only documents being sought pursuant to the revised subpoenas. In addition, the judge rejected the Respondent's position that he should address the enforceability of the subpoenas as a whole, rather than addressing only the portions that remained at issue.

The Board affirmed the Special Master's Report and Recommendations. The Board explicitly reiterated a finding that was implicit in its May 30, 2008 Order: the Respondent's argument that the subpoenas must be considered as a whole and as such are invalid and unenforceable is without merit. The Board noted that the Respondent continued to argue that the subpoenas should be rejected in their entirety because they were abusive, but did not provide any rationale for this argument other than asserting that the subpoena requests were overbroad and compliance would be burdensome. These arguments, the Board stated, were rejected in its May 30, 2008 Order, except with respect to the issue remanded for assignment to a special master. In addition, the Board agreed with the judge's analysis and his conclusion that the remaining documents requested by subpoenas was not unduly burdensome to produce.

The Board also rejected the Respondent's argument that the dispute over the enforceability of the subpoenas is moot, noting that the parties would have a right to request reopening of the record in the event that the continued pursuit of allegedly privileged information yields information that the General Counsel or the Charging Party wished to offer into evidence to support their position, and in light of the possibility that the Board could decide not to adopt some or all of the judge's recommendations in the unfair labor practice decision, following consideration of any exceptions that might be filed.

(Chairman Liebman and Member Schaumber participated.)

County Waste of Ulster, LLC (2-CA-37437, 2-RC-22858; 353 NLRB No. 89) Montgomery, NY Feb. 11, 2009. The Board adopted the administrative law judge's findings that the Respondent (a) violated Section 8(a)(2) of the Act by allowing Local 124, R.A.I.S.E., IUJAT, to distribute a Christmas bonus to its employees; and (b) engaged in objectionable conduct by granting the bonus. The Board severed and remanded the Section 8(a)(1) grant of bonus violation to the judge to clarify whether he intended to find the unalleged violation and, if so, to apply Pergament United Sales, 296 NLRB 333 (1989). A second election is directed. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Laborers Local 108; complaint alleged violation of Section 8(a)(1) and (2). Hearing at New York, Oct. 31, Nov. 21-22 and Dec. 18, 2006, and March 13, 2007. Adm. Law Judge Raymond P. Green issued his decision May 9, 2007.

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Mid-States Express, Inc. (8-CA-37168, 37302; 353 NLRB No. 91) Cleveland and Toledo, OH Feb. 12, 2009. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by: interrogating employees regarding their union activities; giving employees the impression that those activities were under surveillance; threatening employees with plant closure and loss of jobs; soliciting grievances from, and promising benefits to, employees; and calling the police in response to a discharged employee's handbilling on public property outside the Respondent's facility. The Board also adopted the judge's findings that the Respondent violated Section 8(a)(3) and (1) by discharging several employees because of their union activities. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Teamsters Locals 20 and 24; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cleveland and Toledo, March 26-27, and April 21-23, 2008. Adm. Law Judge George Alemán issued his decision Sept. 19, 2008.

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Palmer House Hilton and UNITE HERE Local 1 (13-CA-44223, 13-CB-18772; 353 NLRB No. 90) Chicago, IL Feb. 12, 2009. The Board adopted the administrative law judge's finding that the Respondent-Union violated Section 8(b)(1)(A) and (2) of the Act by continuing to seek Charging Party Mohamad Safavi's discharge following resolution of his dues delinquency. In doing so, the Board set forth the relevant precedent and found that the circumstances of the case established that, by accepting his partial tender of back dues and allowing Safavi to enter into a payment plan, the Union waived its right to enforce the union-security agreement against Safavi and violated Section 8(b)(1)(A) and (2) by continuing to do so. The Board also adopted the judge's finding that the Respondent-Employer violated Section 8(a)(3) by discharging Safavi at the Union's request. The Board found that the Employer failed to investigate the circumstances

of the Union's discharge request upon learning that Safavi had already paid a portion of his back dues and entered into a payment plan. The Board thus concluded, consistent with precedent, that the Employer violated Section 8(a)(3) by discharging Safavi when it had reasonable grounds for believing that the discharge request was unlawful. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Mohamad Safavi, an individual; complaint alleged violation of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2). Hearing at Chicago on May 14, 2008. Adm. Law Judge Keltner W. Locke issued his decision June 27, 2008.

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Genz-Ryan Plumbing and Heating, Inc.* (Sheet Metal Workers Local 10) Burnsville, MN Feb. 11, 2009. 18-CA-18763; JD-09-09, Judge Arthur J. Amchan.

Legacy Health System (Service Employees Local 49) Portland, OR Feb. 11, 2009. 36-CA-10299; JD(SF)-08-09, Judge Gerald A. Wacknov.

*Myers Investigative and Security Services, Inc.* (United Federation of Special Police & Security Officers, Inc.) Lakehurst, NJ Feb. 11, 2009. 22-CA-28417, 28575; JD(NY)-07-09, Judge Joel P. Biblowitz.

PCMC/Pacific Crane Maintenance Co., Inc., LLC and Longshore and Warehouse International (Machinists District Lodges 190 and 160 and Local Lodge 1546) Oakland, CA/Tacoma, WA Feb. 12, 2009. 32-CA-21925, 32-CB-5932, et al.; JD(SF)-09-09, Judge Clifford H. Anderson.

Cook Dupage Transportation Co. (Amalgamated Transit Union Local 1028) Chicago, IL Feb. 12, 2009. 13-CA-44649, 44861; JD-07-09, Judge Robert A. Giannasi.

Classic Lath & Plastering, Inc., and its alter egos Fragata Construction, Inc., Ryan Builders, Inc., R & S Drywall, Inc., and Octavio Fragata (Carpenters Local 94 New England Regional Council) Boston, MA Feb. 12, 2009. 1-CA-42734, et al.; JD-04-09, Judge Paul Buxbaum.

*Embarq Corp.* (Electrical Workers IBEW Local 396) Las Vegas, NV Feb. 13, 2009. 28-CA-22019 et al.; JD(SF)-10-09, Judge Gregory Z. Meyerson.

Regency Grande Nursing and Rehabilitation Center (SEIU 1199 New Jersey Health Care) Newark, NJ Feb. 13, 2009. 22-CA-28331, 28384 and 22-RC-12889, 12895; JD-8-09, Judge Michael A. Rosas.

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### LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Robinson Aviation (RVA), Inc., Greenville, SC, 12-RC-9347, Feb. 9, 2009 (Chairman Liebman and Member Schaumber)

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